IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1196 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

P.N.PATEL & ORS.

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioners

MR ST MEHTA APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/03/2000

ORAL JUDGEMENT

This application is preferred for quashing the criminal proceedings in Criminal Case No.225 of 1991

before the learned Chief Judicial Magistrate, Jamnagar arising out of the complaint made by the respondent No.2 and the order to investigate under Section 156 (3) of the Code of Criminal Procedure made below the complaint. After admitting the matter and granting stay against further proceedings, this court has ordered to issue notice to the original complainant. The learned counsel appearing for the applicants submits that necessary address of the complainant was furnished to the office and notice was issued. The original complainant has been served. No one is present on behalf of respondent No.2.

2. The original complaint is filed by the original complainant in the capacity of a social worker against Government officers, accused Nos.1 to 6, and other three parties. Thus, admittedly, the complaint has no formal or direct relationship of any kind with the parties concerned during the transactions, among whom, the offences are alleged to have been committed. The complaint is based upon vague allegations and averments regarding facts relating to several cases which were pending. The learned advocate appearing for the State has fairly conceded that the State Government has taken no actions against the six officers who are joined as accused in the complaint. From the plain reading of the complaint as also the submissions of the learned counsel it clearly appears that the complaint is filed with an ulterior motive or to abuse the process of law without making out any specific case against any of the accused persons. Moreover, the transactions about which allegations are made in the complaint appear to be the subject-matter of civil suits pending in the Civil Court at Jamnagar.

3. It is held by this court in SURESH KUMAR GUPTA v. STATE OF GUJARAT [(1997) 2 G.L.H. 356] that in order to stop indiscriminate exercise of discretionary power to order investigation under Section 156 (3) of the Code of Criminal Procedure, every Magistrate should record a short order disclosing the reason why he needs investigation. In absence of any such reason, the order to direct inquiry under Section 156 (3) should be treated as bad.

4. In the facts of the present case, where the necessary ingredients of the offences alleged against the accused are not disclosed and in view of the uncontroverted averments in the application, it appears to be just and proper to quash the criminal proceedings.

5. In the result, Criminal Case No.225 of 1991 filed

and pending before the learned Chief Judicial Magistrate, Jamnagar and the order made therein for investigation are quashed and set aside. Rule is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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